

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CFMOTO Powersports, Inc.,

Plaintiff,

Civ. No. 10-3279 (RHK/JJG)

ORDER

v.

United States of America; Janet Napolitano,
Secretary of Homeland Security, Customs and
Border Patrol; and Lisa P. Jackson,
Administrator United States Environmental
Protection Agency,

Defendants.

This matter is before the Court *sua sponte*.

The dispute arises out of the detention and seizure by the Customs and Border Patrol (“CBP”) of several hundred vehicles imported into the United States by CFMOTO Powersports, Inc. (“CFMOTO”) in the spring and summer of 2009 for alleged violations of the Clean Air Act. CFMOTO filed the instant action, asserting claims against the United States, CBP, and Environmental Protection Agency (“EPA”). Currently before the Court is Defendants’ Motion to Dismiss for lack of subject-matter jurisdiction. A hearing on the Motion is currently scheduled for Friday, January 7, 2011.

The Court has preliminarily reviewed the parties’ submissions. The action involves multiple claims and implicates numerous federal statutes and regulations with which this Court is not intimately familiar. Yet in the Court’s view, the arguments presented thus far fail to adequately focus the issues.

In light of the foregoing, **IT IS ORDERED** that:

(1) each side shall file a supplemental memorandum, not to exceed 4,000 words, by 12:00 noon CST on Friday, January 21, 2011. This memorandum shall include:

(a) a high-level overview of each side's position—i.e., what ultimate outcome are you seeking and what, in your view, is the most appropriate and direct avenue to achieve that result;

(b) a summary of the statutes and regulations under which the CBP seized CFMOTO's vehicles and the administrative scheme (or schemes) of the CBP and/or EPA governing their detention and forfeiture, including an explanation of the relationship between the CBP and the EPA as it relates to this matter;

(c) an explanation of CFMOTO's available avenues for administrative relief within the CBP and/or the EPA. What is the current status of the petition for relief CFMOTO allegedly filed under 19 U.S.C. § 1618? Has that avenue been exhausted? What (if any) administrative review processes remain for CFMOTO to pursue within either agency?

(d) a discussion of CFMOTO's request that the matter be referred to the U.S. Attorney for a forfeiture action. What is the current status of that request, and how does it relate to the instant lawsuit? What obligation does the Government have to commence such a forfeiture action? Does this Court have the authority to compel the filing of a forfeiture action as CFMOTO requests?

(2) each side shall submit a response to the supplemental memoranda outlined above, not to exceed 2,000 words, by 4:00pm CST on Tuesday, January 25, 2011; and

(3) the hearing on Defendants' Motion to Dismiss (Doc. No. 4) currently scheduled for Friday, January 7, 2011, is **CONTINUED** to Friday, January 28, 2011, at 11:30 a.m., before the undersigned in Courtroom No. 7A, Warren E. Burger United States Courthouse and Federal Building, 316 North Robert Street, Saint Paul, Minnesota.

Dated: January 6, 2011

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge